

**Sparling Plastic Industries, Inc. and Local 157,
International Union, United Automobile, Aero-
space and Agricultural Implement Workers of
America (UAW), AFL-CIO. Case 7-CA-33493**

December 17, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

Upon a charge filed by the Union on July 17, 1992,¹ and an amended charge filed on August 18, the General Counsel of the National Labor Relations Board issued a complaint on August 20 against Sparling Plastic Industries, Inc., the Respondent, alleging that it violated Section 8(a)(5) and (1) of the National Labor Relations Act. The Respondent was properly served copies of the charge, the amended charge, and the complaint.

On October 22 the General Counsel filed a Motion to Strike Respondent's Purported Answer and for Default Judgment. On October 27 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response to the Notice to Show Cause. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion to Strike Respondent's
Purported Answer and for Default Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service of the complaint "all the allegations in the Complaint shall be considered to be admitted to be true and shall be so found by the Board."

Section 102.21 provides that an answer that is not signed by the party or his or her attorney may be stricken as sham and false and the action may proceed as though the answer had not been served.

The undisputed allegations in the General Counsel's motion disclose that the Acting Regional attorney, by letter dated September 11, notified the Respondent that it had not filed an answer to the complaint, and unless an appropriate answer was filed by September 24, a Motion for Default Judgment would be filed with the Board. The letter further advised the Respondent that if it was having problems meeting the time require-

ments for filing an answer, it could receive an extension of time by submitting a letter to the Regional Director setting forth the reason for the request. Finally, the letter informed the Respondent that if it had any questions regarding this matter, it should contact the counsel for the General Counsel at the Board's Regional Office.

The Respondent failed to file either a timely answer to the complaint or a request for an extension of time in which to file an answer. On October 8, the Respondent filed an unsigned "Answer to Complaint" which states that it ceased doing business on May 5, has no assets, has been unable to collect the funds needed to pay employees for their last week of work, is unable to pay union dues for the year of 1992, and is unable to bargain with the Union. This purported answer fails to admit, deny, or explain each of the allegations in the complaint, is not signed by either the Respondent or an attorney of record, and fails to include a statement indicating the reason for its late submission.

The General Counsel contends that the Respondent's purported answer does not constitute a valid answer because it fails to comport with Sections 102.20 and 102.21 of the Board's Rules and Regulations and moves that it be stricken. We agree with the General Counsel. The Respondent's "Answer to Complaint" fails to specifically admit, deny, or explain each of the allegations in the complaint, and does not include the signature of the Respondent or an attorney of record. Accordingly, we grant the General Counsel's motion to strike Respondent's purported answer. *McElroy Electric Co.*, 297 NLRB 765 (1990). Further, the stricken answer was received by the Regional Director 2 weeks after the extended deadline for filing a timely answer. In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation with its principal office and place of business at 9229 General Drive, Plymouth, Michigan, has been engaged in the business of painting and laminating products for the auto industry. During the calendar year ending December 31, 1991, the Respondent, in conducting its business operations, provided services valued in excess of \$50,000 to companies located within the State of Michigan, each of which companies during the same period of time purchased goods valued in excess of \$50,000 directly from points located outside the State of Michigan and caused those goods to be shipped directly to its facilities located within the State of Michigan. We find that the Respondent is an employer engaged in

¹ All dates are in 1992 unless otherwise indicated.

commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Local 157, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times the Union, by virtue of Section 9(a) of the Act, has been recognized by the Respondent as the exclusive collective-bargaining representative of the employees of the Respondent in the following appropriate unit:

All full-time and regular part-time production and maintenance employees employed by the Respondent at its Plymouth facility; but excluding office employees, timekeepers and supervisors as defined in the Act.

Such recognition is embodied in a collective-bargaining agreement which is effective from November 20, 1987, through November 20, 1992. The collective-bargaining agreement provides, inter alia, for the payment of certain wage rates to unit employees, remission to the Union of all union dues and fees properly deducted from the pay of unit employees, and for life, sickness, and accident and health insurance contributions by the Respondent for unit employees.

Since on or about January 17, the Respondent, by its president and agent, Anthony Demarco, has failed to remit to the Union dues and fees deducted from the pay of unit employees and failed to make payment contributions required by the collective-bargaining agreement for life, sickness, and accident and health insurance for unit employees. Since on or about April 27, the Respondent has failed to pay contractual wages owed to unit employees. By this conduct, the Respondent unilaterally modified the collective-bargaining agreement without complying with the provisions of Section 8(d), and without providing the Union notice or an opportunity to bargain. Accordingly, we find that the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive representative of its employees, and has engaged in unfair labor practices within the meaning of Sections 8(a)(5) and (1) and 8(d) of the Act.

Since on or about January 17, the Respondent has failed to make payment contributions for workers compensation insurance for unit employees. By this conduct, the Respondent has unilaterally changed its past practice with respect to the payment of workers compensation insurance without giving the Union notice or an opportunity to bargain. Accordingly, we find that the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive

representative of its employees, in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

1. By failing to remit to the Union authorized dues and fees deducted from the pay of unit employees, failing to make payment contributions required by the collective-bargaining agreement for life, sickness, and accident and health insurance for unit employees, and by failing to pay contractual wages owed to unit employees, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(5) and (1) and 8(d), and Section 2(6) and (7) of the Act.

2. By failing to make payment contributions for workers compensation insurance for unit employees, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1), and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent violated Section 8(a)(5) and (1) of the Act, we shall require the Respondent to rescind the unilateral changes and to abide by the wages, hours, and other terms and conditions of employment which were in effect before the Respondent engaged in the unlawful conduct. Further, we shall order the Respondent to bargain on request with the Union as the exclusive collective-bargaining representative of the employees in the unit.

In addition, we shall order the Respondent to make whole employees for any loss of wages resulting from the Respondent's unlawful conduct, in the manner prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). We shall also order the Respondent to make whole unit employees by making all payments required by the terms of the collective-bargaining agreement, including making the required insurance contributions.² We shall order the Respondent to reimburse its unit employees for any expenses ensuing from the Respondent's unlawful failure to make such payments as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons*, supra. We shall further order the Respondent to remit to the Union those authorized union dues and

² If employee benefit funds are involved, we leave to the compliance stage the question whether the Respondent must pay any additional amounts in order to satisfy our "make whole" remedy. *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).

fees withheld from employees' pay, with interest as prescribed in *New Horizons*, supra.

Finally, we shall require the Respondent to post and abide by a notice to its employees. Because it appears from the record that the Respondent may have ceased operations on May 5, we shall also provide for mail notices to employees.

ORDER

The National Labor Relations Board orders that the Respondent, Sparling Plastic Industries, Inc., Plymouth, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally failing to remit to Local 157, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO authorized dues and fees deducted from the pay of unit employees.

(b) Unilaterally failing to make contributions required by the collective-bargaining agreement for life, sickness, and accident and health insurance for unit employees.

(b) Unilaterally failing and refusing to make payment contributions for workers compensation insurance for unit employees.

(c) Unilaterally failing to pay contractual wages owed to unit employees.

(d) Refusing to bargain with the Union as the exclusive bargaining representative of the employees in the bargaining unit.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Remit to the Union all authorized union dues and fees deducted from the pay of unit employees, retroactive to January 17, 1992, with interest, in the manner set forth in the remedy section of this decision.

(b) Make the required contributions on behalf of unit employees for life, sickness, accident and health insurance, and workers compensation insurance, retroactive to January 17, 1992, in the manner set forth in the remedy section of this decision.

(c) Make the employees whole for any losses resulting from the Respondent's failure to make contractually required contributions, in the manner set forth in the remedy section of this decision.

(d) Pay contractually required wages to unit employees who were not paid such, with interest, in the manner set forth in the remedy section of this decision.

(e) Rescind the unilateral changes and abide by the wages, hours, and other terms and conditions of employment which were in effect before the Respondent engaged in the unlawful conduct.

(f) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment:

All full-time and regular part-time production and maintenance employees employed by the Respondent at its Plymouth facility; but excluding office employees, timekeepers and supervisors as defined in the Act.

(g) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(h) Post at its facility in Plymouth, Michigan, and mail to unit employees, the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(i) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT unilaterally fail to remit to Local 157, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO authorized dues and fees deducted from the pay of unit employees.

WE WILL NOT unilaterally fail to make contributions required by the collective-bargaining agreement for life, sickness, and accident and health insurance for unit employees.

WE WILL NOT unilaterally fail and refuse to make payment contributions for workers compensation insurance for unit employees.

WE WILL NOT unilaterally fail to pay contractual wages owed to unit employees.

WE WILL NOT refuse to bargain with the Union as the exclusive bargaining representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL remit to the Union all authorized union dues and fees deducted from the pay of unit employees, retroactive to January 17, 1992, with interest.

WE WILL make the required contributions on behalf of unit employees for life, sickness, accident and health insurance, and workers compensation insurance, retroactive to January 17, 1992.

WE WILL make the employees whole for any losses resulting from our failure to make contractually required contributions.

WE WILL pay contractually required wages to unit employees who were not paid such, with interest.

WE WILL rescind the unilateral changes and abide by the wages, hours, and other terms and conditions of employment which were previously in effect.

WE WILL, on request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment:

All full-time and regular part-time production and maintenance employees employed by us at our Plymouth facility; but excluding office employees, timekeepers and supervisors as defined in the Act.

SPARLING PLASTIC INDUSTRIES, INC.